

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1543 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SAGRAMBHAI NAGIBHAI BHARWAD

Versus

STATE OF GUJARAT

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Appearance:

MR SAURIN A SHAH for Petitioners  
MR KC SHAH, Addl. PP for Respondent No. 1  
SERVED for Respondent No. 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/01/97

ORAL JUDGEMENT

This petition under Art.226 of the Constitution of India has been preferred by six convicts, who have been sentenced to undergo Rigorous Imprisonment for three years and a fine, claiming remission to the extent of 1 month and 15 days under the Government Circular dated 20th July, 1995.

2. Petitioners and others were tried for an offence alleged to have been committed under sections 302, 326, 325, 324 read with sections 147, 148 and 149 of the Indian Penal Code. The petitioners were acquitted by the learned Sessions Judge in Sessions Case No. 118 of 1981. Said order of acquittal was reversed in Criminal Appeal No. 584 of 1982 by this Court and under order dated 10th March, 1989, the petitioners were convicted for an offence committed under section 326 read with Sec. 140 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for a period of three years and fine of Rs.3000/- each. Said order of conviction was challenged by the petitioners before the Hon'ble Supreme Court in Criminal Appeal No. 382 of 1989. Said appeal was decided in the year 1995. The conviction ordered by the High Court was confirmed. In view of the order of the Supreme Court, the petitioners surrendered to the prison authorities on 27th October, 1995. Pending trial before the Sessions Court, the petitioners were released on bail. The petitioners were also released on bail by the orders made by the appellate Court. Thus, the petitioners were at large till they surrendered on 27th October, 1995.

3. On 20th July, 1995, it being 125th Birth Anniversary of Rashtrapita Mahatma Gandhi, the Government under its power under Section 432 of the Criminal Procedure Code, ordered to grant remission to the prisoners who had been convicted by the Courts of Criminal jurisdiction of the State and were confined in the jails of the State. The remission was granted to the categories of the prisoners mentioned in the said order to the extent mentioned against each of such categories. So far as the petitioners are concerned, they have been sentenced to undergo rigorous imprisonment for a period of three years. The prisoners sentenced to imprisonment for more than one years and upto three years were granted remission of one month and fifteen days. It is the claim of the petitioners that on 20th July, 1995, the petitioners were already convicted by the High Court though they were released on bail. Since the conviction was confirmed and the petitioners surrendered to the jail authorities to undergo sentence, the petitioners are entitled to the remission of one month and fifteen days under the above referred order dated 20th July, 1995.

4. Learned advocate Mr. Shah appearing for the petitioners has submitted that the factum of their having been released on bail shall not make any difference to their claim for remission under the above referred order. He has submitted that since 1989, the petitioners were

convicted however, the sentence was suspended as the petitioners were released on bail. The petitioners were, therefore, entitled to remission as claimed by them. He has further relied upon the correspondence between the State and the Inspector General of Prisons which is annexed to the affidavit made by the Deputy Inspector General of Prisons. It appears that some query was raised regarding applicability of the said order to the prisoners who were released on bail. In answer to the said query, State of Gujarat had informed the Inspector General of Prisons, under its communication dated 4th January, 1996, that an opinion in this regard was sought from the Legal Department. A further communication was sent by the State Government on 3rd June, 1996 indicating that the Legal Department had opined that those prisoners whose appeals were pending before the Court and were released on bail would also be entitled to remission under the above referred order. Mr. Shah has contended that the opinion of the Legal Department is binding to the Inspector General of Prisons and in view of the above referred opinion, the petitioners having been released on bail are entitled to remission under the above order.

5. I am afraid, I cannot accept the contention raised by Mr. Shah. The communication referred to hereinabove cannot be read out of the context and the same has to be read in view of the queries raised. The Dy. Inspector General of Prisons in his affidavit has referred to the said query in paragraph 10 of the affidavit. It appears that some query was raised, "whether the benefit of the said order dated 20th July, 1995 is required to be conferred upon those convicts who had undergone part of sentence but who were enlarged on bail on account of pendency of appeal at the time of Promulgation of the said order dated 20th July, 1995 ?".

6. Thus, it is obvious that the said query and the answer to the said query pertain only to those prisoners who had undergone part of their sentence and who having preferred appeal before the higher forum were released on bail by the higher court. In the present case, it is admitted that the petitioners had not undergone any part of the sentence since their conviction and, therefore, above referred opinion of the Legal Department of the State would not be attracted in the case of the petitioners. Further, I am of the opinion that the opinion of the Legal Department is not binding to the rest of the departments and the concerned department may or may not accept such opinion.

7. No prisoner has a fundamental right to remission.

Section 432 of the Code, however, empowers the appropriate Government to suspend the execution of sentence or remit whole or any part of punishment. Thus, whatever right to remission petitioners claim originates from the above referred order dated 20th July, 1995. Said order clearly refers to "the prisoners who have been convicted by the Courts of criminal jurisdiction of the State and are confined in jails of the State." Hence, said order cannot be applied to the convicts who are not confined in jail on the date of the order. The petitioners were admittedly never imprisoned before their surrender on 27th October, 1995 and, therefore, they cannot be said to be prisoners on the date of the order dated 20th July, 1995. Further, they were not confined in the jail on the said date. In my view, therefore, the petitioners are not entitled to remission under the said order.

8. Besides, the contention raised by Mr . Shah cannot be accepted because the above order is a special benefit granted for one time. If the contention raised by Mr. Shah were accepted, said benefit would have to be granted to those convicts whose appeals were pending on 20th July, 1995 and who were enjoying bail on the said date and who are required to undergo sentence on account of their appeals having been dismissed as and when such appeal or appeal therefrom is finally decided which may be after a year or even after ten years. The one time benefit which is granted under the above order cannot be extended to such long period.

9. In view of the above discussion, petition is dismissed. Rule is discharged.

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